

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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SUN CHONG LEE alias COLONEL LEE,  
Appellant,

vs.

UNITED STATES OF AMERICA,  
Appellee.

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Transcript of Record

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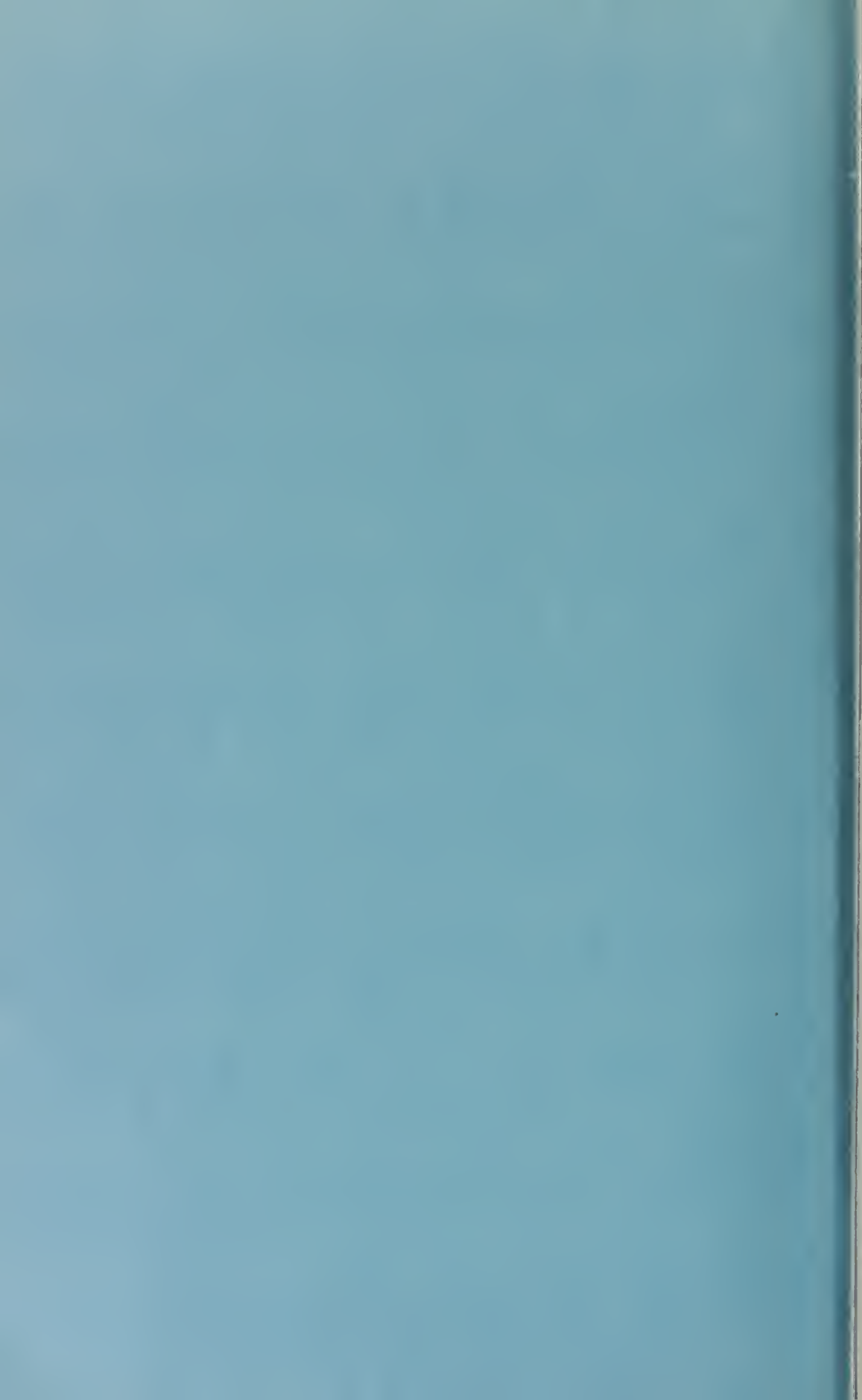
Upon Appeal from the District Court of the United  
States for the Territory of Hawaii.

FILED

APR - 9 1941

PAUL P. O'BRIEN,

CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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SUN CHONG LEE alias COLONEL LEE,  
Appellant,

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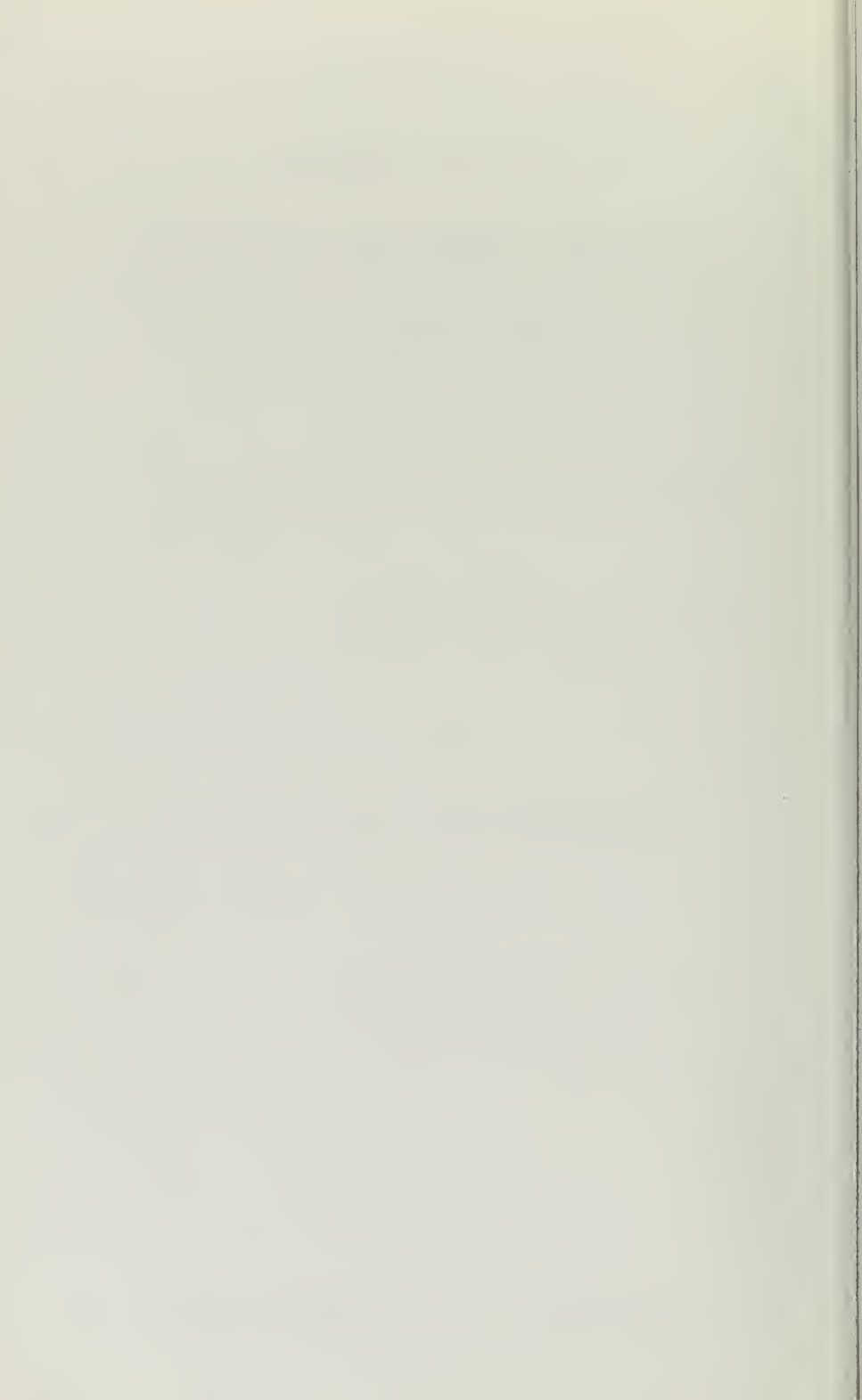
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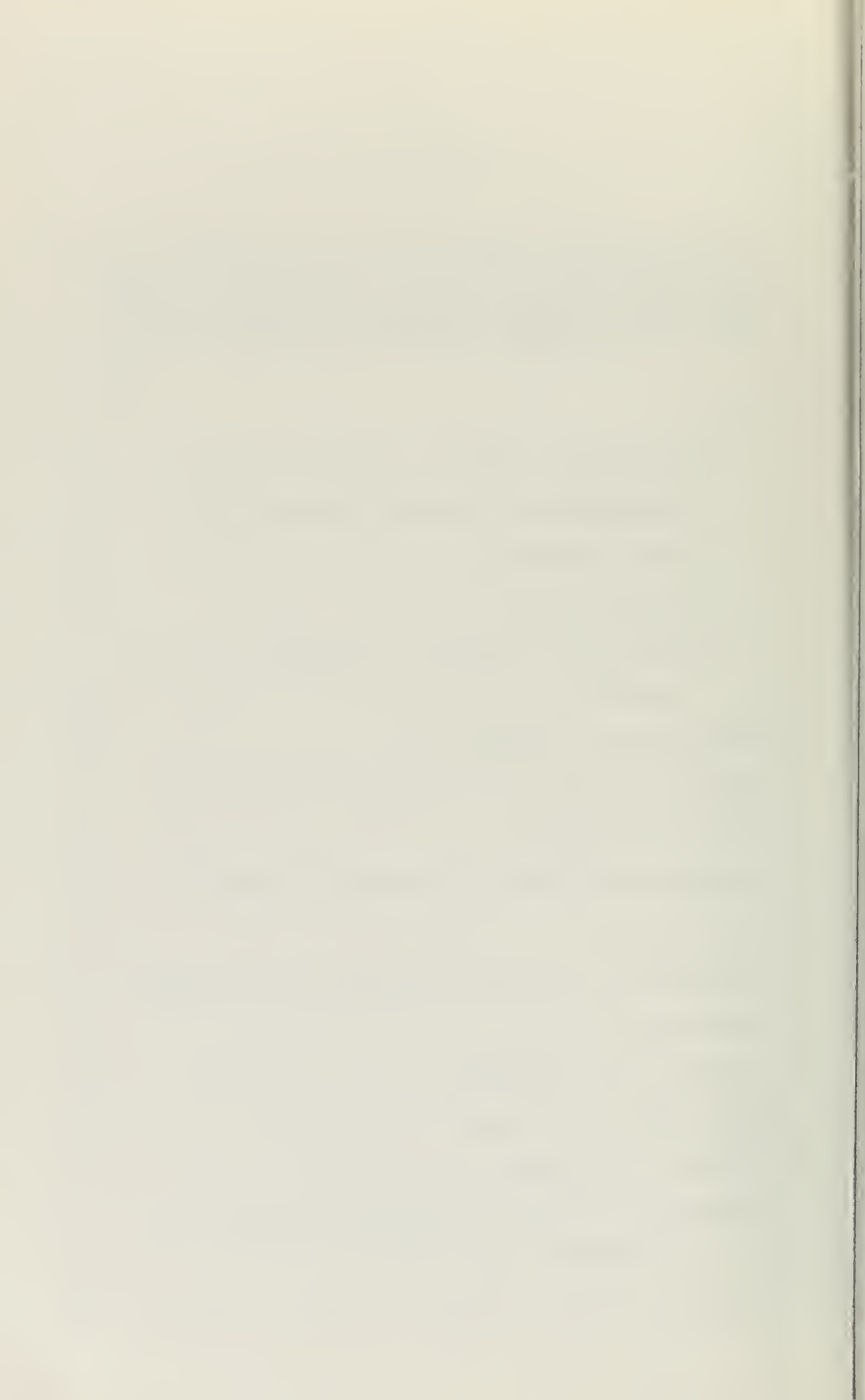
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic: and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

For the Plaintiff, The United States of America  
ANGUS M. TAYLOR, JR., Acting  
United States Attorney,  
Federal Building, Honolulu, T. H.

For the Defendant, Sun Chong Lee  
alias Colonel Lee  
E. J. BOTTS, Esq.,  
Stangenwald Building,  
Honolulu, T. H. [1\*]

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

In the United States District Court for the  
Territory of Hawaii  
October Term 1940  
Cr. No. 9336.

THE UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

PENNY OWENS, SUN CHONG LEE alias  
COLONEL LEE alias S. C. LEE, and ANNE  
LEWIS alias BUDDY alias BUDDY WIL-  
SON alias ANNA READ alias ANNE MIL-  
LER alias CUMA ANNE LEWIS alias CUMA  
ANNE OKAMURA,  
Defendants.

BILL OF EXCEPTIONS AS TO DEFENDANT  
SUN CHONG LEE ALIAS COLONEL LEE

Be It Remembered: That an indictment was re-  
turned against the defendant Sun Chong Lee alias  
Colonel Lee and others in the above entitled matter  
on the 15th day of August, 1940, said indictment  
being in words and figures as follows, to-wit:

“In the United States District Court for the  
Territory of Hawaii

April Term 1940

Count I: Sec. 399, Title 18, United States  
Code.

Count II: Sec. 398, Title 18, United States  
Code.



United States of America:

District of Hawaii—ss.

Count I

“The Grand Jurors of the United States, empaneled, sworn and charged at the term aforesaid, of the Court aforesaid, on their oath present that:

Penny Owens,

Sun Chong Lee alias Colonel Lee alias S. C. Lee, and [50]

Anne Lewis alias Buddy alias Buddy Wilson alias Anna Read alias Anne Miller alias Cuma Anne Lewis alias Cuma Anne Okamura,

(hereinafter called defendants), on or about the 5th day of June, 1940, at and within the Territory and District of Hawaii and within the jurisdiction of this Court, jointly, knowingly, wilfully, unlawfully and feloniously did persuade, induce, entice and coerce a certain woman, to-wit: Nancy O'Connor, to go from Honolulu, City and County of Honolulu, Territory of Hawaii, to Wailuku, Island and County of Maui, Territory of Hawaii, with the intent and purpose in them, the said defendants, to induce and coerce her, the said Nancy O'Connor, and that she should be induced and coerced, to engage in prostitution and debauchery and other immoral practices; and that the said defendants then and there and in furtherance of such purpose jointly, knowingly, wilfully, unlawfully and feloniously did transport

and cause to be transported the said Nancy O'Connor from Honolulu aforesaid to Wailuku, Island and County of Maui, Territory of Hawaii, as a passenger upon the Inter-Island Airways, Ltd., contrary to law and to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

### Count II.

“The Grand Jurors of the United States, empaneled, sworn and charged at the term aforesaid, of the Court aforesaid, on their oath present that:

Penny Owens,

Sun Chong Lee alias Colonel Lee alias S. C. Lee; and

Anne Lewis alias Buddy alias Buddy Wilson alias Anna Read alias Anne Miller alias Cuma Anne Lewis alias Cuma Anne Okamura,

(hereinafter called defendants), the identical persons named in Count I of this Indictment, on or about the 5th day of June, 1940, at and within the Territory and District of Hawaii and within the jurisdiction of this Court, did jointly, knowingly, wilfully, unlawfully [51] and feloniously transport and cause to be transported, and did aid and assist in obtaining transportation for and in transporting a certain woman, to wit: Nancy O'Connor, from Honolulu, City and County of Honolulu, Ter-

ritory of Hawaii, to Kihei, Island and County of Maui, Territory of Hawaii, for the purpose of prostitution and debauchery and other immoral purposes, and with the intent and purpose on the part of them, the said defendants, to induce, entice, and compel said Nancy O'Connor to practice prostitution and to give herself up to debauchery and other immoral practices on the Island of Maui, Territory of Hawaii, contrary to law and to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

A True Bill:

(s) E. L. KNICKERBOCKER

(S) INGRAM M. STAINBACK

United States Attorney District of Hawaii''

and thereafter the said Sun Chong Lee alias Colonel Lee was duly arraigned in the United States District Court for the Territory of Hawaii.

Prior to the entry of a plea in said matter the said defendant, Sun Chong Lee alias Colonel Lee, filed in said Court a Demurrer to said indictment, said Demurrer being in words and figures as follows, to-wit:

(Title, Court and Cause omitted.)

DEMURRER.

“Come now Penny Owens and Sun Chong Lee, two of the defendants above named, and

hereby demur to the indictment on file herein on the following grounds, to-wit:

I.

“That Count one of said indictment is not sufficient in law to compel them or either of them to answer thereto.

II.

“That said count is duplicitous. [52]

III.

“That said count fails to set forth and charge where the said defendants are alleged to have persuaded, enduced, enticed and coerced one, Nancy O’Connor, to go from Honolulu to Wailuku in the Territory of Hawaii; that is to say, whether said claimed persuasion, enducement, enticement and coercion occurred at a place within the jurisdiction of this court or otherwise.

IV.

“That it does not appear in said count the manner or means used and employed in connection with the transportation of the said Nancy O’Connor from Honolulu to Wailuku or whether said transportation occurred over the route of a common carrier or otherwise.

V.

“That said count is vague, uncertain and indefinite.

VI.

“That it does not appear from said count when or at what time or manner said Nancy O’Connor was transported from Honolulu to Wailuku.

VII.

“That it affirmatively appears from said count that the transportation of said Nancy O’Connor was intra-territorial only.

VIII.

“That Title 18, Section 403, U. S. Code, excludes the Territory of Hawaii from the provisions of Section 399 and Section 398, Title 18, U. S. Code, in their intra-territorial application.

“Wherefore, defendants pray that said indictment and each count thereof be quashed and that they go hence without day. [53]

Dated at Honolulu, this 21st day of August, A. D. 1940.

PENNY OWENS and SUN  
CHONG LEE—Two of the  
defendants above named,

By (s) E. J. BOTTS

Their Attorney.”

That thereafter, to-wit: on the 22nd day of August, 1940, said Demurrer was duly argued and submitted to the Court for ruling, and the Court on said last mentioned day overruled said Demurrer, to which ruling said defendant, Sun Chong Lee alias Colonel Lee, did then and there except.

That thereafter the said defendant, Sun Chong Lee alias Colonel Lee, did enter his plea of not guilty to the charge contained in the indictment herein, and the cause being at issue, thereafter, to-wit: on the 28th day of August, 1940, came on for trial, a jury was duly impaneled, and evidence was introduced on behalf of the prosecution and the defendant, and at the conclusion of said evidence the jury was instructed by the Court and thereafter retired to consider its verdict. That on the 6th day of September, 1940, the jury returned its verdict herein in the following words and figures, to-wit:

(Title, Court and Cause omitted.)

#### “VERDICT

“We the Jury, duly impaneled and sworn in the above entitled cause do hereby find as follows: Sun Chong Lee alias Colonel Lee:

of Count One    Guilty  
of Count Two    Guilty

“Dated at Honolulu, T. H., September 6, 1940.

(S) CHARLES F. SCHUTTE,  
Foreman.” [54]

to which verdict the defendant Sun Chong Lee alias Colonel Lee did then and there duly except.

Forasmuch as the matters above set forth do not all fully appear as of record, defendant, Sun Chong Lee alias Colonel Lee, tenders this, his Bill of Exceptions and prays that the same may be signed and approved by the judge of this Court.

Dated at Honolulu, T. H., this 27 day of November, A. D. 1940.

(S) E. J. BOTTS,

Attorney for defendant Sun Chong Lee alias Colonel Lee.

The foregoing Bill of Exceptions was filed on the 27 day of November, A. D. 1940, within the time allowed for filing Bills of Exception. Said Bill being found conformable to the truth is hereby approved, allowed and settled and made a part of the record herein.

Dated: Honolulu, T. H., December 4, A. D. 1940.

(S) D. E. METZGER

Judge, United States District Court for the Territory of Hawaii

Receipt of a copy of the within is hereby acknowledged this 27th day of November, 1940.

(S) ANGUS M. TAYLOR, JR.

Attorney for plaintiff, Acting U. S. Attorney.

[Endorsed]: Filed Nov. 27, 1940. [55]

District Court of the United States  
Hawaii District  
.....Division

No. 9336

Criminal Indictment in two (2) counts for violation of U. S. C., Title 18, Secs. 398 and 399.

UNITED STATES

v.

PENNY OWENS, et al.

JUDGMENT AND COMMITMENT AS TO DEFENDANT SUN CHONG LEE ALIAS COLONEL LEE.

On this 14th day of September, 1940, came the United States Attorney, and the defendant Sun Chong Lee alias Colonel Lee, appearing in proper person, and by his counsel, E. J. Botts, Esq., and,

The defendant having been convicted on a verdict of "Guilty" of the offense charged in the Indictment in the above-entitled cause, to wit: Violation of the White Slave Traffic Act, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby sentenced as to Count I of said Indictment to pay a fine of Five Hundred Dollars (\$500.00) and to serve Three (3) Months in the City and County



Jail at Honolulu, T. H. As to Count II of the Indictment, the imposition of sentence is suspended and the defendant is placed on probation under Rule 131 of this Court, for the period of Three (3) Years, said probationary sentence to begin upon the Defendant's release from jail. Costs are hereby remitted.

Mittimus as to the payment of said fine and as to said jail sentence is hereby stayed until 11:30 A.M. on Monday, the 16th day of September, 1940. and that said defendant be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that Otto F. Heine, United States Marshal for the District of Hawaii, and his Deputies, who are duly authorized probation officers of this Court, shall act as the Defendant's probation officers.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) D. E. METZGER

United States District Judge.

A True Copy. Certified this.....day of.....

(Signed).....

Clerk.

(By).....

Deputy Clerk.

[Endorsed]: Filed Sept. 14, 1940. [14]

[Title of District Court and Cause.]

PETITION FOR APPEAL.

To the Honorable, the Presiding Judge of the Above  
Entitled Court:

Comes now Sun Chong Lee alias Colonel Lee, one of the defendants above named, and conceiving himself aggrieved by the Judgment, Order and Sentence made and entered herein in the above entitled proceedings, does hereby appeal from said judgment, order and sentence to the Circuit Court of Appeals for the Ninth Circuit, and files herewith his Assignment of Errors intended to be urged upon appeal and prays that his appeal may be allowed and that a transcript of all proceedings and papers upon which said judgment, order and sentence was made, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit of the United States.

Dated at Honolulu, this 19th day of November,  
A. D. 1940.

SUN CHONG LEE alias  
COLONEL LEE—One of the  
defendants above named,

By (S) E. J. BOTTS

His Attorney.

Receipt of a copy of the foregoing Petition for Appeal is hereby acknowledged, this 19 day of Nov., 1940.

(S) ANGUS M. TAYLOR, JR.  
Assistant U. S. District Attorney.

[Endorsed]: Filed Nov. 19, 1940. [35]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL.

Upon the application of Sun Chong Lee alias Colonel Lee, one of the defendants above named, and upon the motion of his attorney, E. J. Botts, Esquire,

It Is Hereby Ordered that the petition for appeal, heretofore filed herein by said defendant, Sun Chong Lee alias Colonel Lee, be and the same is hereby granted and the appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment, order and sentence herein and heretofore filed, be and the same is hereby allowed and a record of the proceedings and papers pertinent to the matters and questions sought to be reviewed be prepared, certified and authenticated and transmitted, under the seal of the Clerk of this Court, to the United States Circuit Court of Appeals for the Ninth Circuit of the United States at San Francisco, State of California. [44]

Dated at Honolulu, this 19 day of November, A. D. 1940.

(S) D. E. METZGER

Judge of the above-entitled court.

Receipt of a copy of the foregoing Order Allowing Appeal is hereby acknowledged, this 19 day of Nov., 1940.

(S) ANGUS M. TAYLOR, JR.

Assistant U. S. District Attorney.

[Endorsed]: Filed Nov. 19, 1940. [45]

[Title of District Court and Cause.]

### ASSIGNMENT OF ERRORS.

Comes now Sun Chong Lee alias Colonel Lee, one of the defendants above named, and says that in the records and proceedings of the above entitled matter there is manifest error and that the final judgment is erroneous and against the just rights of defendant in this, to-wit:

#### I

That the Court erred in overruling the demurrer interposed herein by said defendant, Sun Chong Lee alias Colonel Lee.

#### II

That the Court erred in holding and finding (by overruling the demurrer interposed herein) that the charge contained in Count One of the indictment herein, predicated on Section 399 Title 18, U. S. Code, sufficiently charged a criminal offense under said section notwithstanding it was nowhere alleged in said indictment that the transportation complained of therein occurred over the route of a common carrier. [37]

#### III

That the Court erred in overruling the demurrer with respect to Count One of said indictment by reason of the fact that said count failed to allege that the transportation complained of in said indictment occurred over the route of a common carrier.

IV

That the Court erred in overruling the demurrer herein by reason of the fact that Section 403, Title 18, U. S. Code excludes the Territory of Hawaii from the provisions of Sections 398 and 399, Title 18, U. S. Code, with respect to intra-territorial transportation.

Wherefore, said defendant prays that the judgment and sentence of the Court herein may be reversed, annulled and held for naught and that the said defendant may be discharged and may have such other and further relief as may be proper in the premises.

Dated at Honolulu, this 19 day of November, A. D. 1940.

SUN CHONG LEE alias  
COLONEL LEE—One of the  
defendants above named,

By (S) E. J. BOTTS

His Attorney.

Receipt of a copy of the foregoing Assignment of Errors is hereby acknowledged, this 19 day of Nov., 1940.

(s) ANGUS M. TAYLOR, JR.  
Assistant U. S. District Attorney.

[Endorsed]: Filed Nov. 19, 1940. [38]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD  
ON APPEAL

United States of America,  
Territory of Hawaii.—ss.

I, Wm. F. Thompson Jr., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify that the foregoing pages numbered from 1 to 57 inclusive are a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office, and I further certify that I am attaching hereto the original citation on appeal and that the costs of the foregoing transcript of record are \$16.25 and that said amount has been paid to me by the appellant.

In Testimony Whereof, I have hereto set my hand and affixed the seal of said court this 15th day of January, A. D. 1941.

(Seal)

WM. F. THOMPSON, JR.,  
Clerk U. S. District Court, Territory of Hawaii.

[58]

[Endorsed]: No. 9726. United States Circuit Court of Appeals for the Ninth Circuit. Sun Chong Lee alias Colonel Lee, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Hawaii.

Filed January 22, 1941.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the United States Circuit Court of Appeals  
for the Ninth Circuit  
Case No. 9726.

SUN CHONG LEE,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

NOTICE OF STATEMENT OF POINTS RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED.

Comes now Sun Chong Lee, appellant above named, and hereby gives notice, pursuant to Subdivision 6 of Rule 19, that the points relied upon in the above entitled appeal are set forth in the Assignment of Errors which is hereby adopted as the points on appeal referred to in said rule.

That the parts of the record desired by appellant to be printed are as follows:

1. Bill of Exceptions	Pages 49-55
2. Assignments of Errors	“ 36-38
3. Petition for Appeal	“ 34-35
4. Order Allowing Appeal	“ 43-45
5. Cert. of Clerk	

Dated at Honolulu, T. H., this 29th day of January, 1941.

SUN CHONG LEE—Appellant

By E. J. BOTTS

His Attorney.

Receipt of a copy of the foregoing Notice of Statement of Points Relied Upon and Designation of Parts of Record to be Printed is hereby acknowledged, this 30 day of Jan., 1941.

ANGUS M. TAYLOR, JR.

Acting U. S. District Attorney.

[Endorsed]: Filed Feb. 13, 1941. Paul P. O'Brien,  
Clerk.